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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/820,479

03/31/2004

David W. Moskowitz

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27128 7590 12/12/2008  
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EXAMINER

RAE, CHARLESWORTH E

ART UNIT

PAPER NUMBER

1611

NOTIFICATION DATE

DELIVERY MODE

12/12/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

pto-sl@huschblackwell.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/820,479	<b>Applicant(s)</b> MOSKOWITZ, DAVID W.	
	<b>Examiner</b> CHARLESWORTH RAE	<b>Art Unit</b> 1611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 September 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) 1-5, and 8-15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 6-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                      |                                                                   |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____                                                          | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

Applicant's arguments, filed 09/19/08, have been fully considered but they are not deemed to be persuasive. Rejections and/or objections not reiterated from previous office actions are hereby withdrawn. The following rejections and/or objections are either reiterated or newly applied. They constitute the complete set of actions being applied to the instant application.

This action is made final. The new bases of the rejections are necessitated by the amendment of the claims.

### **Status of the Claims**

Claims 1-15 are currently pending in this application.

Claims 1-5 and 8-15 are withdrawn for examination purposes for being directed to non-elected subject matter.

Claims 6-7 are under examination.

### **Response to applicant's arguments/remarks**

#### Scope of enablement rejection under 112, 1<sup>st</sup> para

Applicant contends that this rejection should be withdrawn (see applicant's Response, received 06/11/08, pages 1-2).

In response, this rejection is withdrawn in view of the claim amendment.

## REJECTION

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***Claim rejections – 35 USC 112 – Second Paragraph***

The following is a quotation of the second paragraph of 35 USC 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 7 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 7 recites the term “symptoms associated with SARS,” which renders the claimed subject matter indefinite because it is unclear if term refers to the population with SARS or to those patients who have the symptoms might be experienced SARS patients without SARS. It is suggested that this specific rejection may be overcome by either replacing the term “symptoms associated with SARS” with the term “symptoms caused by SARS” provided said amendment do not introduce new matter.

**Claim rejections – 35 USC 102**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 6-7 are rejected under 35 USC 102(b) as being anticipated by  
Matsumori (US Patent 5,605,919).**

Matsumori et al. teach a method of treating viral diseases in animals, including humans, comprising administering a compound having angiotensin II antagonistic activity in an effective amount to treat a **viral disease** e.g. viral myocarditis (abstract; col. 1, line 36-60; and reference claims 1 and 9). Matsumori et al. teach said method is directed to prevent and treat cell injuries in various organs regardless of the type of virus involved e.g. ameliorate virus-associated cell injuries (col. 1, lines 44-48). Matsumori et al. disclose that it is generally acknowledged that the cell injury in viral diseases includes not only direct damages inflicted by the proliferation of viruses but is associated with various immunologic reactions elicited by infection with viruses (col. 1, lines 40-44). Also, Matsumori et al. teach that viral disease includes those diseases which are caused or induced by pathogenic viruses belonging to either the category of DNA viruses or the category of RNA viruses (e.g. coronaviruses). See col. 14, lines 42-58, especially line 55).

It is noted that claim 7 recites the term "SARS" which is known to be caused by a coronavirus. As noted above, Matsumori et al. also teach viral diseases caused by coronaviruses.

The instant method step of "administering to a patient in need thereof of an effective amount of an angiotensin blocker" is anticipated by the teaching of Matsumori

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et al. of a method comprising administering a compound having angiotensin II antagonistic activity in an effective amount to treat a **viral disease**.

With respect to the preamble, one would reasonably expect that administration of the identical instantly claimed compounds in an effective amount to the same instantly claimed population (humans with viral infections) as taught by Matsumori et al. would result in the same therapeutic effects. Thus, the preamble is anticipated by the cited art.

It is noted that the instant application discloses that many ARBs are known in the art, any of which may be useful (specification, page 40, lines 1-3). Thus, one would reasonably expect that administration of any known angiotensin II receptor inhibitor in an effective amount, including the angiotensin II compounds taught by Matsumori, would be also effective in treating any patient in need of treatment, including a patient with SARS as evidenced by the teaching of Matsumori et al. of a method directed to prevent and treat cell injuries in various organs regardless of the type of virus involved (col. 1, lines 44-48).

For the above reasons, claims 6-7 are found to be anticipated by Matsumori et al.

### **Conclusion**

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charlesworth Rae whose telephone number is 571-272-6029. The examiner can normally be reached between 9 a.m. to 5:30 p.m. Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sharmila G. Landau, can be reached at 571-272-0614. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have any questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 800-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the

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automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

2 December 2008

/C. R./ Examiner, Art Unit 1611

/Sharmila Gollamudi Landau/

Supervisory Patent Examiner, Art Unit 1611